

failing to particularly point out and distinctly claim the subject matter regarded as the invention. According to the Office Action, the claims are replete with indefiniteness, and the following noted examples are responded to:

✓ 1. Lack of antecedent basis for “the frame” in claim 1. Applicant respectfully submits that the quoted phrase needs no antecedent basis, because it does not pertain to a claim element.

✓ 2. Lack of antecedent basis for “the reeds” in claim 1. Applicant respectfully submits that the quoted phrase needs no antecedent basis, because it does not pertain to a claim element.

✓ 3. Lack of antecedent basis for “said cavity dorsally” in claim 2. Applicant respectfully submits that the Examiner misreads claim 2. The phrase “said cavity” finds antecedent basis in claims 1 from which it depends, namely, “an essentially planar cavity”. (Claim 1, line 3.) The phrase “dorsally bounded by buttress of said housing” of claim 2 further limits “said cavity”.

✗ 4. Lack of ^{proper} antecedent basis for “said mated pair” in line 3 of claim 3. Lines 1 and 2 of claim 3 include a “pair of essentially horseshoe-shaped planar halves folded joined at their ends, each half mate-able with” a corresponding plane of the other half. (Underlining added.) The “mated-pair” of line 3 of claim 3 finds antecedent basis in that quoted and underlined language.

5. Lack of ^{proper} antecedent basis for “said contour-mimicking upper surface” in line 1 of claim 8. Claim 7 includes a flap comprising an “upper surface adapted to mimic the contour of the user’s palate”. (Underlining added.) This quoted and underlined language provides antecedent basis for “contour-mimicking upper surface” in claim 8.

6. The Office Action expresses uncertainty as to what structure is encompassed by the phrase “adapted to” in line 3 of claim 1. Claim 1 includes an essentially planar elastomeric material

defining an essentially planar cavity, adapted to relatively snugly capture the frame containing the reeds. The questioned phrase “adapted to” provides limits to the “planar cavity” structure recited in claim 1; the dimensions of the planar cavity are thereby limited to that which will relatively snugly capture the frame containing the reeds, without interfering with the sound producing characteristics of the reeds.

7. The Office Action expresses uncertainty as to what structure is encompassed by the phrase “sized for” in line 1 of claim 6. Claim 6 specifies a housing device described in claim 5, “sized for ready placement of the caller-housing combination at least near the palate of the user”. The questioned phrase “sized for” limits the size of the housing device, to that necessary for placement of the caller-housing combination near the palate of the user. Such language is necessary, because the precise dimensions of the palate of the user are unknown, and are even variable. Applicant respectfully submits that it is appropriate to define the dimension of this claim limitation in such a manner, under such circumstances.

8. The Office Action expresses uncertainty as to what is encompassed by the phrase “said cavity dorsally bounded by buttress” in line 3 of claim 2. The phrase “dorsally bounded by buttress of said housing” of claim 2 further limits “said cavity”. At page 9 line 1 of the written description in the Application, “buttress” appears in the context of a supportive wall-like structure. The cavity may be “bounded by buttress of said housing.” (Application, page 8 lines 17 & 18.) One version of the invention may also include a crescent or horseshoe-shape “flap integrally extending from the housing buttress or other outer edge of the cavity wall.” (Application, page 10 lines 1 & 2.)

9. The Office Action expresses uncertainty as to what is encompassed by the phrase “ventrally oriented space essentially situated between the corresponding ventral arcs” in claim 3.

This particular version of the invention is intended to house one frame-reed assembly already known in the art. That known reed-frame assembly essentially occupies the space essentially bounded by the two ventral arcs and the opposing horseshoe arms. (See Application, page 9 lines 2-12.)

10. The Office Action expresses uncertainty as to what is encompassed by the phrase "said buttress" in claim 5. At page 9 line 1 of the written description in the Application, "buttress" appears in the context of a supportive wall-like structure. The cavity may be "bounded by buttress of said housing." (Application, page 8 lines 17 & 18.) One version of the invention may also include a crescent or horseshoe-shape "flap integrally extending from the housing buttress or other outer edge of the cavity wall." (Application, page 10 lines 1 & 2.)

11. The Office Action expresses uncertainty as to what is encompassed by the phrase "a human palate". The "palate" is a term of art known in the medical field. This is not a claim limitation. The American Heritage Dictionary, Second College Edition, generally defines "palate" as "the roof the mouth in vertebrates having a complete or partial separation of the mouth cavity and nasal passage, consisting of a bony front, the hard palate back by the fleshy soft palate."

12. The Office Action expresses uncertainty as to what is meant by the phrase "the reed(s)" of line 1 of claim 1. Applicant does not claim either the frame or the one or more reeds fitting within the frame, which are known in the art. Some game callers have only a single reed. Other game callers have a plurality of reeds. The "reed(s)" is meant to encompass both types of reed-frame assemblies known in the art. Applicant notes that the last paragraph of page 4 of Office Action expresses the Examiner's correct presumption that this application does not claim the frame or reed(s).

C. Regarding Rejections under 35 U.S.C. §102(b).

Claims 1 - 20 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,960,400 issued to Cooper (the "400 Patent"), disclosing one or more flexible reed diaphragms

secured within a frame, which is sealed within a yoke. Applicant respectfully submits that the present invention is distinguishable from Cooper in several important respects.

Significantly, Cooper's yoke does not allow any interchanging of reeds/frames. Cooper's "assembled frame and diaphragms are placed on the adhesive surface 87 of ... the yoke 8, and the other half is folded over ... and the margins of the yoke pressed together to seal the space around the frame". ('400 Patent, column 3 line 67 through column 4 line 4.) By contrast, one primary object of the present "invention is to provide a housing that facilitates interchanging or substitution of caller frames readily. The hunter will thereby be enabled to change the tune or tenor of game calling relatively easily." (Application, page 3 lines 18 - 20.) Although the user may alter the sound of the caller by conventional means such as by differential airflow or tongue action across the reed(s), additional utility is bestowed upon the present invention by the ability to quickly and easily substitute an entirely different reed/frame assembly.

Another distinguishing functional characteristic is that Cooper's yoke is not resilient; although the '400 Patent discloses a yoke "made of flexible tape" (column 2 line 13), there is nothing in the '400 Patent indicating that the yoke has the conformational memory that is one hallmark of resiliency. The present invention has "resiliency to provide the necessary housing characteristics, capturing characteristics and release features of the invention. Alternatively, the housing may be constructed with moldable materials having sufficient flexibility and conformational memory to essentially retain the molded conformation." (Application, page 8 lines 1 - 6.) Such conformational memory imparts utility upon the present invention, in several ways. It allows the present invention to essentially stretch open to envelop the reed/frame, then return to its resting conformation to retain that reed/frame until the user desires to remove it or replace it with another reed/frame.

Conformational memory also better facilitates the blockage of air flow between the caller and the user's palate; the tendency of the housing to return to its resting conformation assures that

the housing remains snug against the user's palate, rather than becoming warped and out of shape. The present invention is further distinguished from the '400 Patent in that Cooper's yoke does not conform to the user's palate. "Another object of the present invention is to provide a housing having a resiliently flexible flap capable of more comfortably preventing or reducing the mis-direction of breath between the palate and caller (rather than beneath the caller)." (Application, page 3 lines 21 - 23.) "Another object of the invention is to provide a housing having a flap more readily conformable to the configuration of a user's palate. This will eliminate or reduce the natural gag reflex often accompanying the initial usage of similar callers presently in use." (Application, page 4 lines 1 - 3.)

There are several sound, utilitarian grounds for distinguishing the present invention over the '400 Patent.

1. Claims 1 and 11 are rejected because, according to the Office Action, the '400 Patent teaches a device for housing comprising elastomeric material and a planar cavity configured as claimed. Applicant respectfully submits that the plastic frame of Cooper, cited by the Office Action, is not analogous to the elastomeric housing claimed in this Application. The plastic frame in the '400 Patent is intended to rigidly support most of the outer margins of the reed; the Cooper frame has no conformational memory, nor any of the other distinguishing characteristics explained immediately above.

2. Claims 2 and 12 are rejected because, according to the Office Action, Cooper teaches a ventral aspect and a dorsal aspect. Although these two claims include a ventral aspect and a dorsal aspect, these are not necessarily the primary distinguishing features of these claims. Beside the distinguishing characteristics of claims 1 and 11 (explained immediately above), from which each of these claims depends, claims 2 and 12 are further distinguished by the buttress (wall) forming the boundary of the cavity. In the '400 Patent, no such boundary exists, and the reed-frame is merely held stationary by being sandwiched between two pieces of tape stuck together.

3. Claims 3 and 13 are rejected because, according to the Office Action, Cooper further

teaches at least one resiliently-flexible reed. Applicant submits that in claim 1 of the present invention, neither the reed(s) nor the frame are claimed limitations; those items are found within the prelude or preface to the claimed elements. With respect to claim 13 of the present invention, those items form part of the "combination", distinguished from the '400 Patent by the distinguishing characteristics recited for the housing device (explained immediately above, such as, for example, elastomeric material defining and essentially planar cavity adapted to relatively snugly capture of the frame).

4. Claims 4 and 14 are rejected because, according to the Office Action, Cooper further teaches an end stop (83). Applicant believes that the Office Action intended cite feature 84 rather than feature 83 in the '400 Patent, because feature 83 is a triangular notch whereas feature 84 is defined as a "closure web or strap". ('400 Patent, column 3 line 23.) The closure web or strap in Cooper is formed at the fold of the tape, thereby causing the yoke to permanently retain the reed-frame between the adhesive layers of non-elastomeric tape. By contrast, the end stops of the present invention function to retain the frame after it is inserted within the cavity, but allow removable of same when desired.

5. Claims 5 and 15 are rejected because, according to the Office Action, Cooper further teaches a crescent flap. Applicant submits that there are other distinguishing characteristics found in the claims from which claims 5 and 15 depend. Although the '400 Patent teaches a flap superficially resembling the flap in the present invention, the Cooper flap is neither elastomeric nor moldable to the user's palate. The distinguishing characteristics explained immediately above apply equally to this rejection.

6. Claims 6 and 16 are rejected because, according to the Office Action, the functional recitations are inherent in the device of Cooper. Applicant submits that the folded flexible tape of the '400 Patent is not elastomeric; it has no conformational memory. The distinguishing characteristics explained immediately above apply equally to this rejection.

7. Claims 7, 8, 17 and 18 are rejected because, according to the Office Action, Cooper further teaches an upper surface in its figure 5. Applicant believes that the Office Action intended to cite figure 7 rather than figure 5. Figure 7 of the '400 Patent depicts the tape in an unfolded configuration; one half above the notches is the upper lobe or surface, while the half below the notches is the lower lobe or surface. Figure 5 of the '400 Patent depicts Cooper's invention from a side elevation view, indicating that the upper surface essentially mirrors the lower surface. By contrast, comparison of Cooper's figure 5 with figure 3 of the present invention illustrates the distinguishing characteristics of claims 7 and 17 (upper surface adapted to mimic the contour of the user's palate), and Claims 8 and 18 (an essentially convex surface). These distinguishing features are not taught by the '400 Patent.

8. Claims 9 and 19 are rejected because, according to the Office Action, Cooper further teaches a human palate as claimed. Applicant respectfully submits that neither the '400 Patent nor the present application claims a human palate. To the extent that a human palate is included in any of the claims of the present invention, it is included primarily to define the contour mimicked or assumed by the upper surface of the reed-frame housing.

9. Claims 10 and 20 are rejected because, according to the Office Action, Cooper further teaches a concave lower surface in its figure 6. Applicant believes that the Office Action intended to cite figure 7 rather than figure 6, or mistakes the outer-arcing edge of the flap as concave rather than convex. In either event, figure 4 of the present invention depicts a concave lower surface (41) when viewing the present invention in a side elevation view from the back. Such concavity is similar to that experienced when one runs his or her tongue tip along the roof of the mouth. Nothing in Cooper teaches a concave lower surface.


III. ELECTION

Applicant hereby confirms the election, without traverse, made in connection with the Examiner's restriction requirement. Without agreeing with the Examiner's reasoning requiring election, Applicant elects to pursue claims 1 through 20 in Group I; Applicant reserves the right to pursue patenting of remaining claim 21 (Group II). Applicant also clarifies an apparent typographical error in page 3 of the Office Action, wherein the Examiner states that claim 20 (rather than method claim 21) is withdrawn from further consideration herein; Applicant understands that claim 20 remains under consideration herein, whereas claim 21 is withdrawn from consideration as being drawn to a non-elected invention.

IV. CONCLUSION

Applicant thanks the Examiner for her assistance in this matter. Based upon the foregoing, Applicant believes that all objections and rejections raised in the Office Action have been satisfied, putting claims 1 through 20 in condition for allowance.

Respectfully submitted,


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